

### REMARKS

Applicant thanks the Examiner for the remarks and analysis contained in the Office Action. Amendments to the claims are presented above. Support for the amendments to claims 1, 10 and 19 is found at page 18, lines 5-14 of the specification. Support for the amendments to claims 22, 23 and 27 is found at page 21, lines 11-19.

Applicant respectfully submits that the rejections under 35 U.S.C. §102 and §103 contained in the most recent Office Action can be withdrawn. The rejections were based upon the *Bornstein, et al.* reference. Applicant respectfully submits that that reference does not disclose or suggest an arrangement as recited in Applicant's claims presented above.


Applicant's independent claims 1, 10 and 19 include determining an available bandwidth for purposes of ranking the nodes. This is not disclosed in the *Bornstein, et al.* reference, either. Instead, races are conducted using ping data. Those races are scored based upon three measurements as described in paragraph [0042]. None of the three measurements mentioned in paragraph [0042] provides any information regarding available bandwidth. There is nothing in the *Bornstein, et al.* reference to teach or suggest the use of available bandwidth as recited in some of Applicant's claims.

The *Bornstein, et al.* reference does not have any ranking of overlay nodes where there are at least three different levels of overlay nodes and where each level of ranking has associated probing interval such that the different rankings having correspondingly longer intervals between probes. By contrast, the *Bornstein, et al.* reference merely teaches performing races to choose among alternate routes and a direct route by "occasionally testing the performance of each connection." There is nothing in the *Bornstein, et al.* reference that suggests having a series of

rankings and using different timing for probing for each of those rankings as recited in Applicant's independent claims 22, 23 and 27.

Applicant respectfully submits that this case is in condition for allowance.

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